IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ENERGY AUTOMATION SYSTEMS, INC., **Plaintiff,** **v.** **XCENTRIC VENTURES, LLC, d/b/a BADBUSINESS BUREAU and/or BADBUSINESSBUREAU.COM and/or RIP-OFF REPORT and/or RIPOFFREPORT.COM, and EDWARD MAGEDSON a/k/a ED MAGEDSON,** **Defendants.**	)	**Civil Action No. 3:06-cv-01079** **Judge Aleta Trauger** **Magistrate Judge Juliet Griffin** **JURY DEMAND**

AMENDED COMPLAINT

Plaintiff, Energy Automation Systems, Inc. ("EASI"), for its Amended Complaint against Defendants, Xcentric Ventures, LLC, d/b/a Badbusiness Bureau and/or badbusinessbureau.com and/or Rip-Off Report and/or ripoffreport.com ("Xcentric") and Edward Magedson a/k/a Ed Magedson ("Magedson"), states as follows:

PARTIES, JURISDICTION AND VENUE

1. EASI is a corporation organized and existing under the laws of the State of Tennessee and is, therefore, a citizen of Tennessee and of no other state.

2. Xcentric is a limited liability company organized and existing under the laws of Arizona with its principal office located in Arizona. Xcentric is a citizen, therefore, of Arizona and of no other state. The domain names of ripoffreport.com and badbusinessbureau.com

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(collectively the "Website") are registered to Xcentric. Xcentric also receives donations provided to support the Website.

3. Upon information and belief, Magedson is a citizen and resident of Arizona and of no other state.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of Seventy-Five Thousand Dollars ($75,000.00).

5. This Court has personal jurisdiction over Defendants because they: (1) direct tortious conduct at EASI, which maintains its principal place of business in this judicial district; and (2) operate a commercial, interactive website in this judicial district. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants' unlawful conduct substantially occurs in this judicial district and Defendants solicit and engage in business within this judicial district.

FACTUAL ALLEGATIONS

6. EASI is a Tennessee business engaged in the distribution of equipment which reduces the volume of electricity consumed by electric motors, lighting equipment, air conditioning and refrigeration equipment, and other machinery and equipment powered by electricity. While EASI engages in some direct sales to end-users, the substantial majority of its products are sold through a network of authorized resellers with whom EASI enters into a contractual relationship (the "EASI dealers"). All EASI dealers are parties to binding written contracts between EASI and the dealers.

7. Because the substantial majority of EASI's products are sold through EASI's dealers, it is vitally important to EASI's business that EASI maintain good relations with its

dealers and that the dealers remain active and productive participants in the distribution of EASI's products. EASI has gone to considerable expense and effort to develop and maintain its dealer network and devotes the substantial majority of the company's staff-hours every working day to supporting and assisting its dealers in the marketing and distribution of EASI's products.

8. EASI regularly undertakes to expand the size of and improve the quality of its dealer network. To further that objective EASI regularly seeks out qualified candidates to become EASI dealers and responds to communications received from parties who have expressed an interest in becoming EASI dealers. EASI regularly conducts dealer training and orientation sessions in which both prospective and actual EASI dealers are provided information and instructions concerning EASI's products and the customary methods utilized by EASI and its dealers to distribute those products. EASI also markets the dealership opportunity on the Internet.

9. Magedson created the Website. The Website is a commercial and interactive website identified by and located through either of two domain names, ripoffreport.com and badbusinessbureau.com. Upon information and belief, Magedson and Xcentric actively control and maintain the Website, together with the assistance of one or more unknown persons.

10. The Website purports to expose companies and individuals who "ripoff" customers. The Website is not a neutral forum for evaluation of businesses. Instead, a business only appears on the Website if it purportedly "ripped off" a "victim," is a "bad business" and/or engaged in "bad practices." The Website's purported aim is to bring "bad businesses to the attention of the world."

11. Defendants actively solicit and receive complaints – so called "Rip-off Reports" – from all over the country, including Tennessee. Upon information and belief, Defendants have

edited and published over two thousand reports directed at Tennessee companies (at least twenty of which concern EASI), some of which were purportedly authored by Tennessee residents.

12. Defendants have solicited and published on the Website complaints containing numerous false and deceptively misleading statements of fact concerning EASI, its dealerships and its employees made at least in part by a few disgruntled former EASI dealers using different pseudonyms to disparage EASI and to create the appearance that numerous dealers are unhappy with EASI.

13. Upon information and belief, Defendants offer some individuals the prospect of compensation for submitting reports. On the Website, Defendants have outlined some "tactics to use in digging up bad businesses or expanding on the report you may have made." Such tactics include recommending questions to ask, searching the internet for people with similar experiences and asking the Website's "professionals" for "information or help" by emailing them at "reporters@RipOffReport.com." Upon information and belief, Defendants have encouraged consumers to gather and post specific information about targeted companies.

14. Defendants lend credence to the complaints on the Website by characterizing them as "reports." Defendants further add credence to the reports by characterizing them as part of the Website's "file" on the targeted business used purportedly to create more accurate information on the business's bad practices, so that the company will "succumb to the pressure and change." On the Website, Defendants state that members of the media "know that the [Better Business Bureau], Attorney Generals and other agencies are not reliable or cooperative sources when compared to Rip-off Report."

15. Defendants list EASI on the Website's "Top Rip-Off Links," featured on the Website's homepage. In doing so, Defendants have developed and/or created false and

deceptively misleading original content on the Website concerning EASI.

16. Defendants have created and/or listed various "Categories and Topics" by which targeted companies and individuals are organized on the Website. Such Categories and Topics identifying EASI on the Website include "Corrupt Companies" and "Con Artists." The Website states that "the list is continually modified as new categories emerge." These Categories and Topics contain false and deceptively misleading statements of fact concerning EASI and its employees and constitute original content on the Website.

17. Upon information and belief, Defendants have developed and/or created on the Website titles, various headings and editorial messages concerning individuals and/or companies targeted by the reports. These report titles, headings and editorial messages have been published on the Website and constitute original content. Report titles, headings and/or editorial messages on the Website concerning EASI include, but are not limited to, that EASI's dealerships are a "complete" and "long running" "scam," that EASI is a "damn scam ripoff business from hell," that EASI's Chief Executive Officer is a "consumer fraud ripoff artist con man," that EASI's Chief Executive Officer and other employees are "crooked" and "crooks," that "EASI likes to threaten anyone that complains whether dealer or ex-employee" and that EASI has engaged in "fraud." These report titles, headings and/or editorial messages contain numerous false and deceptively misleading statements of fact concerning EASI, its dealerships and its employees and constitute original content.

18. Upon information and belief, Defendants possess and at times exert significant editorial control over the content of the Website. The Website and/or related websites refer to Magedson as the "EDitor" and as the "Editor in Chief" of the Website. In fact, the Website lists Magedson's email address as "EDitor@RipoffReport.com". According to the Website, the

Defendants and/or "the badbusinessbureau.com Review Board" have exercised discretion over which "comments" are "accepted by the badbusinessbureau.com Review Board." For example, the Website has stated that "meaningless" or "trivial" comments will not be "accepted" as opposed to "solid" and "productive" comments. Drawing the distinction between what comments are "meaningless" or "trivial" and those that are "solid" or "productive" is a subjective exercise requiring discretion and contributes to the creation and development of original content on the Website. The Website has further represented that the comments "will be treated as 'Letters to the Editor.'" The Website also states that "especially convincing" stories can be picked up on "the Home page."

19. Defendants require complainants to submit personal information (including a first and last name, email address, city, state and phone number) for "possible verification." Defendants have "updated [the Website's] registration process to verify e-mail addresses." By soliciting and requiring this personal information, Defendants have the unique ability to verify whether complainants are who they say they are and whether content created by third-party complainants is accurate and truthful.

20. Defendants, presumably with the aid of unknown persons, have created the "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program." Through this so-called program, Defendants offer to resolve disputes between targeted companies and complainants regarding published "Rip-off Reports" on the Website if the targeted company pays Defendants a sum of money. This so-called service is offered on the Website.

21. EASI founder and Chief Executive Officer Joseph Merlo, who resides in Tennessee, contacted Magedson via email and informed him of the presence of numerous false

and misleading statements on the Website regarding EASI and its employees. Mr. Merlo offered to prove the falsity of many of the statements with sworn testimony of the person who admitted to submitting the messages to Defendants. Mr. Merlo asked that the false and misleading statements be removed from the Website. In a series of emails, Magedson refused to remove the false and misleading statements and instead demanded payment for remedying the falsities pursuant to the "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program" offered on the Website. Mr. Merlo declined the offer to pay for this so-called service.

22. Defendants' Website is commercial in nature in that it, among other things, advertises, promotes and offers to sell to Tennessee residents and others Defendants' purported consumer advocacy publication the "Rip-Off Revenge Guide" for $21.95. On the Website, Defendants also actively solicit and receive donations from all over the country, including Tennessee. On the Website, Defendants represent that they may use Rip-off Reports to help organize lawsuits, including class action litigation. Defendants offer to contact complainants if such a lawsuit is being considered or has been filed. Defendants offer to assist complainants in seeking media attention, such as by putting complainants in contact with the media.

23. The Website's content has disrupted and threatens to disrupt EASI's ability to conduct business in that prospective dealers use Internet search engines to find information about EASI, but then discover the false content regarding EASI. EASI must respond to these false, misleading, disparaging and/or defamatory comments and allegations in its dealings with existing and prospective customers and dealers. EASI likely does not have the opportunity to respond to every person who accesses the Website because EASI does not know the identities of all persons who access the Website and review the false information. Defendants' conduct has

caused EASI to lose at least two dealership sales, which individually sell for approximately $40,000.00 and has damaged EASI's business and reputation.

24. Defendants continue to pose a threat of harming EASI and its business through the development, creation and/or publishing of false and defamatory statements regarding EASI, its dealerships, its Chief Executive Officer, its management and/or employees. Defendants have refused to comply with EASI's requests to remove the false content and to delete every false statement of fact about or concerning EASI's business. Without knowing the identity of some of the presently unknown sources of such information, EASI does not have the ability to prevent Defendants and others from disseminating such false, misleading, disparaging and/or defamatory comments and allegations to third parties.

COUNT I
(Defamation)

25. EASI incorporates by reference the above paragraphs of this Amended Complaint as if set forth in full and makes the following allegations.

26. Defendants have developed and/or created false statements on the Website about EASI, its dealerships and its employees with knowledge that the statements are false and defamatory or with reckless disregard for the truth of the statements or with negligence in failing to ascertain the truth of the statements.

27. The substance of such statements includes that EASI is a corrupt company and a con artist, that EASI dealerships are a scam, that EASI's Chief Executive Officer and fellow employees are crooked and that EASI warrants inclusion in the Website's top Rip-off links.

28. The statements have caused EASI to lose at least two dealership sales and have damaged EASI's business and reputation. Defendants' unlawful conduct has damaged EASI, in an amount to be determined at trial, and entitles EASI to compensatory and punitive damages.

29. Additionally, because its remedy at law is inadequate, EASI seeks preliminary and permanent injunctive relief to protect its reputation and interests. Unless Defendants are restrained and enjoined, Defendants will continue to harm EASI irreparably, thereby further damaging EASI and impairing EASI's business reputation and activities.

COUNT II
(Violation of the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-101, et seq.)

30. EASI incorporates by reference the above paragraphs of this Amended Complaint as if set forth in full and makes the following allegations.

31. Defendants have developed and/or created false and misleading representations of fact on the Website that disparage EASI and its dealerships. Defendants' Website represents that EASI's dealerships and services are of a lower standard, quality or grade than is in fact the case. Defendants' Website activity related to EASI is deceptive to the consumer and to the general public in violation of T.C.A. § 47-18-104.

32. Defendants' willful and intentional unfair and deceptive acts and practices affecting the conduct of trade and commerce have caused EASI to lose money and other value in the form of at least two lost dealership sales and damage to EASI's business and reputation.

33. Pursuant to T.C.A. §§ 47-18-108 and 109, Plaintiff is entitled to recover its actual damages, treble damages and attorneys' fees and costs. Plaintiff is also entitled to a preliminary and permanent injunction to prevent those deceptive acts and practices.

COUNT III
(Interference with Business Relations)

34. EASI incorporates by reference the above paragraphs of this Amended Complaint as if set forth in full and makes the following allegations.

35. Defendants have developed and/or created on the Website false and defamatory statements regarding EASI that have interfered with EASI's business relationships with its current and potential customers.

36. These false and defamatory statements have been communicated with the knowledge that dealers and potential dealers had an existing or prospective business relationship with EASI and with the intention of interfering with that relationship. Defendants' interference with EASI's business relationships has further been conducted with improper motive and/or improper means.

37. Defendants' wrongful interference with EASI's business relations has been willful and deliberate and has caused EASI to incur loss and damages.

38. Defendants' tortious interference with EASI's business relations entitles EASI to compensatory and punitive damages in an amount to be determined at trial.

COUNT IV
(Civil Conspiracy)

39. EASI incorporates by reference the above paragraphs of this Amended Complaint as if set forth in full and makes the following allegations.

40. Defendants and unknown persons have had a common design by means of concerted action to develop and/or create on the Website false and misleading statements regarding EASI and its dealerships.

41. Defendants and unknown persons have developed and/or created on the Website such false and misleading statements.

42. Defendants and unknown persons have created the "Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program." Through this so-called "program," Defendants offer to attempt to resolve disputes between targeted companies and

complainants regarding published “Rip-off Reports” on the Website. This so-called service is offered on the Website.

43. EASI founder and Chief Executive Officer Joseph Merlo informed Magedson of false statements regarding EASI, its employees and its dealerships on the Website. Mr. Merlo offered to prove the falsity of many of the statements with sworn testimony of the person who supplied the messages on the Website.

44. Magedson demanded payment and participation in the Defendants’ “Rip-off Report Corporate Advocacy Business Remediation & Customer Satisfaction Program” before taking any action to remedy the false and misleading statements.

45. These actions constitute a civil conspiracy to use coercion to obtain EASI’s property. These actions also constitute a civil conspiracy to develop, create and/or publish defamatory, false or misleading statements regarding EASI, its dealerships and its employees.

46. These actions have caused EASI to incur loss and damages and entitle EASI to compensatory and punitive damages in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment awarding the following relief:

1. Compensatory damages in an amount to be established at trial;

2. For violations of T.C.A. §§ 47-18-108 and 109 of the Tennessee Consumer Protection Act, three times Plaintiff's actual damages;

3. Punitive damages;

4. Attorneys’ fees and costs;

5. A preliminary injunction requiring Defendants to remove from the Website any false and defamatory statements concerning EASI, its dealerships, or its employees, and prohibiting Defendants from later publishing such statements on the Website;

6. A permanent injunction requiring Defendants to remove from the Website any false and defamatory statements concerning EASI, its dealerships, or its employees, and prohibiting Defendants from later publishing such statements on the Website; and

7. For such other and further general relief which may be appropriate.

JURY DEMAND

Plaintiff demands a jury to try this cause.

s/ William L. Campbell, Jr.
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William L. Campbell, Jr. (BPR #022712)
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made upon the following Filing Users through the Electronic Filing System:

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this 5th day of March, 2007.

s/ William L. Campbell, Jr.